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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Feb 28, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

LEON D. SEARLES, JR.,

Plaintiff,

v.

YAKIMA COUNTY OF  
WASHINGTON STATE, NICHOLAS  
B. BARRETT, LOREN D. OAKLEY,  
and PAUL KELLY,

Defendants.

NO: 1:22-CV-3176-TOR

ORDER DISMISSING ACTION

BEFORE THE COURT is Plaintiff Leon D. Searles, Jr.'s First Amended Complaint. ECF No. 7. Plaintiff, a pretrial detainee housed at the Yakima County Jail, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

**AMENDED COMPLAINT**

As a general rule, an amended complaint supersedes the original complaint and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint

1 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814  
2 F.2d 565, 567 (9th Cir. 1987) (citing *London v. Coopers & Lybrand*, 644 F.2d 811,  
3 814 (9th Cir. 1981)), *overruled in part by Lacey*, 693 F.3d at 928 (any claims  
4 voluntarily dismissed are considered to be waived if not replied). Furthermore,  
5 defendants not named in an amended complaint are no longer defendants in the  
6 action. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore, the  
7 Clerk of Court shall **TERMINATE** Defendants State of Washington, Yakima  
8 County Superior Court and Department of Assigned Counsel for Yakima County  
9 Superior Court from this action and **ADD** Defendants Yakima County of  
10 Washington State, Nicholas B. Barrett, Loren D. Oakley, and Paul Kelly.

11 However, liberally construing the First Amended Complaint in the light most  
12 favorable to Plaintiff, the Court finds that Plaintiff failed to cure the deficiencies of  
13 his initial complaint and the First Amended Complaint fails to state a claim upon  
14 which relief may be granted. For the reasons set forth below, the First Amended  
15 Complaint is dismissed.

#### 16 **PLAINTIFFS’ ALLEGATIONS**

17 Plaintiff contends that Nicholas B. Barrett, a Deputy Prosecuting Attorney,  
18 knowingly violated his right to due process under federal and state law. ECF No. 7  
19 at 3–4. Plaintiff states that he was booked into the Yakima County Department of  
20 Corrections on charges of “Harassment, Theft 3, and unlawful possession firearm 2”

1 on November 22, 2021. ECF No. 7 at 4, 18. He indicates that at this First  
2 Appearance on November 23, 2021, his bail was set at \$20,000.00. *Id.* at 6, 18.

3 Plaintiff states that Defendant Barrett then filed a motion to amend on  
4 November 24, 2021, and although a judicial officer found no probable cause to  
5 amend, Plaintiff's bail was increased to \$250,000.00. *Id.* at 6, 18. Plaintiff states  
6 that on November 29, 2021, Defendant Barrett filed a "Criminal Information"  
7 charging Plaintiff with First-Degree Assault. *Id.* at 9.

8 Plaintiff claims that on December 7, 2021, he was "denied Appearance," and  
9 the Court imposed a "10.77 for Competency Evaluation" and Defendant Barrett filed  
10 an "Amended Criminal Information" for one count of First-Degree Assault and five  
11 counts of Felony Harassment and two counts of "Unlawful Possession Firearm 1."  
12 *Id.* at 9. Elsewhere, Plaintiff asserts that his appointed counsel waived his  
13 appearance without his consent and imposed a 10.77 Competency Evaluation. *Id.* at  
14 19, 21.

15 Plaintiff states an Order of Continuance was entered and an Arraignment was  
16 scheduled for December 28, 2021, and he was not released from custody. *Id.* at 9.  
17 Plaintiff contends that charges were not timely filed, and Defendant Barrett  
18 knowingly violated court rules and attempted to violate rules of professional  
19 conduct. *Id.* at 10. He accuses Defendant Barrett of "prosecutorial  
20 mismanagement," by "overcharging" him on December 7, 2021. *Id.* at 11. Plaintiff

1 complains that the Competency Evaluation Report was not provided by the  
2 Evaluator on December 28, 2021, and although he requested that his case be  
3 dismissed, his appointed counsel Defendant Loren D. Oakley objected, and a judge  
4 entered an Order of continuance for January 12<sup>th</sup> of an unspecified year. *Id.* at 19.

5 Plaintiff contends that he was deprived of his liberty for 445 days, he suffered  
6 stress, and was denied due process of law. *Id.* at 12. He also claims that he lost  
7 income and will not know the extent of his damages until after he is released. *Id.*

8 Plaintiff asserts that on July 19, 2022, his court appointed counsel, Defendant  
9 Loren D. Oakley, failed to file certain documents with the trial court, but raised an  
10 objection. *Id.* at 14, 24. Plaintiff indicates there was a hearing before a judge on  
11 July 22, 2022, at which Defendants Barrett and Oakley were present, but Defendant  
12 Oakley failed to file certain documents with the trial court to have Plaintiff's case  
13 dismissed. *Id.* at 14. Plaintiff asserts lawyer misconduct under state court rules and  
14 denial of his right to due process under the Fourteenth Amendment. *Id.* at 15.  
15 Plaintiff then asserts ineffective assistance of counsel. *Id.* at 17.

16 Plaintiff states that he filed a complaint against his appointed counsel with the  
17 Washington State Bar Association and was instructed to "raise ineffective counsel  
18 in open court." *Id.* at 20. Plaintiff states that a "triage hearing" was conducted on  
19 January 13, 2023, at which he intended to raise the issue of ineffective counsel based  
20 on his counsel's actions in July 2021. *Id.* Plaintiff also accuses his counsel of

1 “allowing the time for appeal to laps while his client was deemed incompetent, in  
2 violation of court rules.” *Id.* at 20. Plaintiff asserts that Defendant Oakley did not  
3 confer with Plaintiff in private prior to the January 13<sup>th</sup> triage hearing, and Plaintiff  
4 asserts that he did not consent to a continuance. *Id.* Plaintiff contends that “the only  
5 remedy left at this point to ensure the Defendant a fair trial is to dismiss case with  
6 prejudice for violating Defendants right to due process of law under U.S. Const.  
7 Amend XIV.” *Id.* at 21.

8 Under “Count III” of the complaint form, Plaintiff asserts that Defendant  
9 Loren D. Oakley “knowingly violated Defendants right to Due process of Law under  
10 U.S Cont Amend VI, and XIV,” and state criminal rules. *Id.* at 22. Plaintiff asserts  
11 that on September 1 of an unspecified year, Defendant Oakley set two separate trial  
12 dates in January and February 2023, and a readiness hearing for January 13, 2023.  
13 *Id.* at 22–23. Plaintiff asserts that Defendant Oakley knew Plaintiff was going to  
14 raise ineffective assistance of counsel at the January 13, 2023 triage hearing, and  
15 “knowingly denied” Plaintiff the right to be present in court that date to ask for his  
16 case to be dismissed. *Id.* at 23.

17 Plaintiff states that he did not consent to a continuance and the January 23,  
18 2023 trial date expired, but he has not been released from custody. *Id.* at 23.  
19 Plaintiff states that he has sought pretrial habeas corpus relief, which was denied on  
20 February 22, 2023. *Id.* He contends that he is unlawfully detained. *Id.*

1 In his statement of relief, Plaintiff asserts “Settlement; Dismiss all charges  
2 First Degree Assault, 5 Counts Felony Harassment, 2 Counts Unlawful Poss Firearm  
3 1 under Case #21-1-01966-39/21-1-1066-39 release without conditions  
4 \$500,000,000.00.” *Id.* at 30. The First Amended Complaint is signed February 9,  
5 2023. *Id.*

## 6 **YOUNGER ABSTENTION**

7 If a state prisoner challenges the fact or duration of his confinement or seeks  
8 a determination that he is entitled to release or a shortening of confinement, his only  
9 federal remedy is a writ of habeas corpus with its requirement of exhaustion of state  
10 remedies. *See Preiser v. Rodriguez*, 411 U.S. 475, 487-90 (1973); 28 U.S.C.  
11 § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Moreover, the abstention doctrine  
12 set forth in *Younger v. Harris*, 401 U.S. 37 (1971), prevents a federal court in most  
13 circumstances from directly interfering with ongoing criminal proceedings in state  
14 court. The *Younger* abstention doctrine also bars requests for declaratory and  
15 monetary relief for constitutional injuries arising out of a plaintiff’s ongoing state  
16 criminal prosecution. *Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986). Plaintiff’s  
17 remedy regarding any speedy trial, excessive bail, or ineffective assistance of  
18 counsel claims lies with the court that currently has jurisdiction over his prosecution.

19 This Court must abstain from considering Plaintiff’s challenges to his ongoing  
20 state criminal proceedings, absent extraordinary circumstances where the danger of

1 irreparable harm is both great and immediate. *See Younger*, 401 U.S. at 45. “[O]nly  
2 in the most unusual circumstances is a defendant entitled to have federal  
3 interposition by way of injunction or habeas corpus until after the jury comes in,  
4 judgment has been appealed from and the case concluded in the state courts.” *Drury*  
5 *v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972); *see also Carden v. Montana*, 626 F.2d  
6 82, 83-84 (9th Cir. 1980).

7 Every prong of the *Younger* abstention doctrine favors abstention in this  
8 action. There is an ongoing state criminal proceeding that implicates important state  
9 interests. Any constitutional issues may be adequately litigated in the Yakima  
10 County Superior Court. In addition, Petitioner has the opportunity and means to  
11 challenge the fairness of his criminal trial, including his claims of prosecutorial  
12 misconduct, speedy trial, excessive bail, and ineffective assistance of counsel, in the  
13 state appellate system, and then, if necessary, through subsequent state and federal  
14 habeas corpus proceedings.

15 Only in cases of proven harassment or prosecutions undertaken by state  
16 officials in bad faith without hope of obtaining a valid conviction and perhaps in  
17 other extraordinary circumstances where irreparable injury can be shown is federal  
18 injunctive relief against pending state prosecutions appropriate. *Perez v. Ledesma*,  
19 401 U.S. 82, 85 (1971). Petitioner has not asserted facts sufficient to show he is  
20 entitled to federal pretrial intervention. No case “permit[s] the derailment of a

1 pending state proceeding by an attempt to litigate constitutional defenses  
2 prematurely in federal court.” *Braden v. 30th Judicial Circuit Court of Ky.*, 410 U.S.  
3 484, 493 (1973).

4 The *Younger* abstention doctrine applies while a case works its way through  
5 the state appellate process, if a prisoner is convicted. *New Orleans Pub. Serv., Inc.*  
6 *v. Council of City of New Orleans*, 491 U.S. 350, 369 (1989). Consequently, even  
7 if Plaintiff had adequately alleged a constitutional violation, the abstention doctrine  
8 would apply while his criminal proceedings are pending. *See Yahoo! Inc. v. La Ligue*  
9 *Contre Le Racisme*, 433 F.3d 1199, 1224 (9th Cir. 2006); *Smith v. Cent. Ariz. Water*  
10 *Conservation Dist.*, 418 F.3d 1028, 1030 (9th Cir. 2005). Therefore, any allegations  
11 concerning Plaintiff’s pending prosecution are premature.

## 12 SECTION 1983

13 Furthermore, Plaintiff’s allegations are insufficient to state a viable claim  
14 under 42 U.S.C. § 1983. Section 1983 requires a claimant to prove (1) a person  
15 acting under color of state law (2) committed an act that deprived the claimant of  
16 some right, privilege, or immunity protected by the Constitution or laws of the  
17 United States. *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988). A person  
18 deprives another “of a constitutional right, within the meaning of section 1983, if he  
19 does an affirmative act, participates in another’s affirmative acts, or omits to perform  
20 an act which he is legally required to do that *causes* the deprivation of which [the

1 plaintiff complains]." *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1439 (9th Cir.  
2 1991) (emphasis and brackets in the original), *abrogated in part on other grounds*,  
3 *Farmer v. Brennan*, 511 U.S. 825 (1994); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th  
4 Cir. 1978).

5 A complaint must set forth the specific facts upon which the plaintiff relies in  
6 claiming the liability of each defendant. *Ivey v. Bd. of Regents*, 673 F.2d 266, 268  
7 (9th Cir. 1982). Even a liberal interpretation of a civil rights complaint may not  
8 supply essential elements of a claim that the plaintiff failed to plead. *Id.* To establish  
9 liability pursuant to § 1983, Plaintiff must set forth facts demonstrating how each  
10 Defendant caused or personally participated in causing a deprivation of Plaintiff's  
11 protected rights. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Taylor v. List*,  
12 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff alleges nothing against Defendant  
13 Paul Kelly.

14 The Court previously advised Plaintiff that he must show the existence of  
15 unconstitutional policies, regulations, or ordinances, promulgated by officials with  
16 final policymaking authority in order for Yakima County to be liable under section  
17 1983. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 121 (1988); *Monell v. N.Y.C.*  
18 *Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). He did not do so. He has failed to  
19 state a claim against Yakima County of the Washington State upon which this Court  
20 can grant relief.

1 Plaintiff's allegations against the deputy prosecuting attorney, Defendant  
2 Nicholas B. Barrett, also fail to state a claim under 42 U.S.C. § 1983. Again, claims  
3 for monetary damages against prosecutors are barred by absolute prosecutorial  
4 immunity. *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). This immunity  
5 applies to conduct "intimately associated with the judicial phase of the criminal  
6 process" and protects prosecutors when performing traditional activities related to  
7 the initiation and presentation of criminal prosecutions. *Id.*; *accord Botello v.*  
8 *Gammick*, 413 F.3d 971, 976 (9th Cir. 2005) ("[I]t is well established that a  
9 prosecutor has absolute immunity for the decision to prosecute a particular case[.]")  
10 *See, e.g. Burns v. Reed*, 500 U.S. 478, 490-92 (1991) (prosecutor is absolutely  
11 immune for participation in a probable cause hearing); *Imbler*, 424 U.S. at 431  
12 (absolute immunity for initiating a prosecution); *Milstein v. Cooley*, 257 F.3d 1004,  
13 1008-09 (9th Cir. 2001) (noting that prosecutorial immunity covers claims of the  
14 knowing use of false testimony at trial, malicious prosecution, and suppression of  
15 exculpatory evidence); *Roe v. City and County of San Francisco*, 109 F.3d 578, 583-  
16 84 (9th Cir. 1997) (absolute immunity for decision to prosecute and for professional  
17 evaluation of a witness "even if that judgment is harsh, unfair or clouded by personal  
18 animus."); *Ybarra v. Reno Thunderbird Mobile Home Village*, 723 F.2d 675, 677-  
19 80 (9th Cir. 1984) (prosecutorial immunity applies to destruction of evidence).

20 When a prosecutor decides to litigate, interview witnesses, or gather evidence,

1 he or she is engaging in conduct that relates to the preparation of his or her case.  
2 *Schlegel v. Bebout*, 841 F.2d 937, 943-944 (9th Cir. 1988). These activities are  
3 shielded by absolute prosecutorial immunity. *Id.* at 944. Plaintiff's claims that  
4 Defendant Barrett brought charges, sought to amend charges and filed amended  
5 charges will not lower the shield of absolute prosecutorial immunity. Consequently,  
6 Plaintiff has failed to state a claim upon which relief may be granted.

7 Finally, whether an attorney representing a criminal defendant is privately  
8 retained, a public defender, or court-appointed counsel, he or she does not act under  
9 color of state law. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981), *holding*  
10 *limited on other grounds by West v. Atkins*, 487 U.S. 42 (1988); *Miranda v. Clark*  
11 *County*, 319 F.3d 465,468 (9th Cir. 2003) (*en banc*) (even assuming a public  
12 defender who subpoenaed no witnesses and mounted no defense provided deficient  
13 representation, he was acting in the traditional lawyer role and would not be  
14 considered a state actor). Therefore, Plaintiff has failed to state a claim upon which  
15 relief may be granted under 42 U.S.C. § 1983 against his court-appointed counsel,  
16 Defendant Loren D. Oakley.

17 Although granted the opportunity to do so, Plaintiff did not amend his  
18 complaint to state a claim upon which this Court could grant relief. Therefore, for  
19 the reasons set forth above and in the Court's prior Order, ECF No. 6, **IT IS**  
20 **ORDERED:**

1. The First Amended Complaint, ECF No. 7, is **DISMISSED** for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1), but **without prejudice** to Plaintiff pursuing appropriate state appellate and federal habeas relief.

2. Based on this Court's reading of *Washington v. Los Angeles Cnty. Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will **NOT** count as a "strike" pursuant to 28 U.S.C. § 1915(g).

3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact.

The Clerk of Court is directed to enter this Order, enter judgment, provide copies to Plaintiff, and **CLOSE** the file.

DATED February 28, 2023.



THOMAS O. RICE  
United States District Judge